IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No 666 of 1980

For Approval and Signature:

Hon'ble MR.JUSTICE D.K.TRIVEDI

==========

1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? :

PRAHALADSINHJI P JADEJA

Versus

HEMATLAL M POBARU

Appearance:

MR. R.B. Dagli for PM THAKKAR for appellant.

Mr. Tejas Karia for MS HANSA B PUNANI for Respondent.

CORAM : MR.JUSTICE D.K.TRIVEDI

Date of decision: 29/11/2001

ORAL JUDGEMENT

The appellant, original-plaintiff has preferred this appeal and challenges the judgment and decree passed by the learned Civil Judge (SD), Rajkot, dated 12th February, 1980 in Special Civil Suit No. 97 of 1978 on several grounds.

2. Mr. Dagli, learned advocate appearing for the appellant-plaintiff while arguing the matter has taken me

through the judgment as well as the oral and documentary evidence on the record of the case. It is his contention that the learned trial Judge has misread the evidence, with the result that the learned trial Judge has dismissed the suit which was filed against the defendant for recovery of money deposit. It is his contention that reading the document, Exh. 39 it is clear that the plaintiff was entitled for the deposit made by him with the defendant and the plaintiff was entitled for refund of the said amount on demand. It is his submission that the learned trial Judge having held that the plaintiff has established that he has kept Rs. 16,000/- with the defendant as deposit at the time of sale of the property of the plaintiff as well as having held that the plaintiff had proved that the defendant had agreed to repay the said amount of Rs. 16,000/- within 17 months from the date of execution of the document, i.e. on 18th September 1972. However, the learned Judge has dismissed the suit of the plaintiff by holding that the suit filed by the plaintiff for recovery of the said amount is barred by limitation. He accordingly urged that the learned trial Judge has committed error in dismissing the suit as well as committed error in deciding the issue of limitation against the plaintiff by holding that the suit filed by the plaintiff is beyond the period of limitation. Mr. Dagli has further submitted that as found from the evidence the plaintiff has established his claim for the deposit made by him with the defendant in view of the document Exh. 39 and the learned trial Judge has committed error in holding that the document Exh. 39 is a document of security deposit and the plaintiff was entitled for refund of the said amount. To support his submission, while taking me through the pleadings and the evidence he submitted that a dishonest defence is taken when the legal notice was issued to the defendant and while replying to the said notice through advocate he has come out with the defence that the defendant is not liable to pay any amount as per the ntoice. On the contrary it is his case that the plaintiff has taken a sum of Rs. 10,000/- by way of loan by executing the promissory note and when the amount was demanded, to avoid making payment a forged suit is filed. The contention of the defendant is that the entire sale consideration of the property was paid at the time of executing the document. Mr. Dagli has also in his submission contended that the defendant has not entered in the witness box which clearly indicate that the purpose for not entering the witness box is to avoid the legitimate claim of the plaintiff based on document. He accordingly prayed that the appeal be allowed and the claim of the plaintiff be decreed with costs.

3. Mr. Karia, the learned advocate appearing on behalf of the respondent-defendant has supported the reasoning of the learned trial Judge, and it is contention that in view of the document Exh. 39 which clearly indicates that the document is a document of security deposit and not simple deposit, the learned trial Judge has rightly construed the said document as 'security deposit', and in view of the said document being a security deposit, the learned trial Judge has held that the suit filed by the plaintiff is barred by limitation and prayed for dismissal of the appeal. Mr. Dagli and Mr. Karia have also placed reliance upon certain decisions which I will refer to hereafter.

4. On considering the submissions made before me and on going through the judgment and the evidence on record, this Court is only required to examine whether the learned trial Judge was right in dismissing the suit of the plaintiff by holding that the suit filed by the plaintiff is barred by limitation as the ld. trial Judge has on appreciation of evidence held while deciding the other issues in favour of the appellant-plaintiff that the plaintiff has established that he has kept Rs. 16,000/- as deposit with the defendant at the time of sale of the suit property and further that the plaintiff has also established that the defendant had agreed to repay the said sum of Rs. 16,000/- within 17 months from the date of execution of the document, i.e. on 18th September 1972. It is also undisputed that as per document dated 18th September 1972 executed between the parties the property of the appellant-plaintiff known as "Dharampur Utara" situated at Bhupendra Road in Rajkot was purchased by the defendant and the defendant has paid the consideration amount to the plaintiff. It is also an admitted fact that the suit property was in occupation of the defendant as a tenant. Reading the document Exh. 39, it shows that for want of time in future if anybody objects for such sale and as per the understanding between the parties, the plaintiff has kept Rs. 16,000/= with the defendant as a 'reserved deposit' for a period of 17 months with the understanding that during this period if anybody raise any objection for the transaction of sale, the defendant has to return the said money and the plaintiff has to take steps to recover the said money with interest. The document Exh. 39 is on the stamp paper signed by the parties in presence of two witnesses. It is also an admitted fact that nobody has raised any objection about such transaction. It is also undisputed that by virtue of the purchase of the property by defendant from the plaintiff the property though kept as

tenant has continued with the defendant and he became the owner of the said property. As found from the evidence the plaintiff has demanded money from the defendant and as there was no response and evasive and dishonest reply was given by the defendant in reply to the legal notice issued by the plaintiff, the plaintiff had instituted a suit for recovery of the said amount. It is also found from the evidence and the learned trial Judge has rightly held in favour of the plaintiff that the property in question was purchased by the defendant as per the consideration agreed between the parties and further that the amount of Rs. 16,000/= was kept by way of deposit with the defendant at the time of executing the document of sale of property on 18th September 1972 and the defendant had also agreed to repay Rs. 16,000/= within 17 months from the date of the execution when the legal notice for recovery of the amount was issued by the plaintiff to the defendant and as found from the written statement, the defendant has denied the claim of the plaintiff as agreed to him that he has paid the full consideration of the property to the plaintiff at the time of execution of the document. However, it is his case that the plaintiff has taken from him a sum of Rs. 10,000/= by way of loan by executing a promissory note and when he has demanded the said loan amount from the plaintiff to avoid for such payment of loan, the plaintiff has filed a forged suit. As observed earlier, the defendant has not stepped into the witness box nor he has taken any steps for recovery of Rs. 10,000/= from the plaintiff as found from the written statement that the plaintiff has taken a sum of Rs. 10,000/= as loan by executing promissory note. No such document is forthcoming, namely the so-called promissory note executed by plaintiff in favour of defendant. In my view, this shows the conduct of the defendant as on one hand the plaintiff's case is based on document Exh. 39 and as per the document Exh. 39 the plaintiff has kept Rs. 16,000/= with the defendant, and further that the trial Court has accepted the case of the plaintiff that at the time of executing the document, Exh. 39 the plaintiff has kept Rs. 16,000/= with the defendant by way of deposit. The document Exh. 39 is proved and further that the defendant has purchased the property of the plaintiff which was occupied by him even prior to executing the said document and he was occupying the said property as a tenant. The recital of document Exh. 39 shows that in case if anybody objects to such sale transaction and as agreed between the parties, the plaintiff has kept by way of security with the defendant a sum of Rs. 16,000/=, and if any person objects for such transaction within 17 months, the defendant has to

pay to the plaintiff the said amount for which the plaintiff has to take steps and the plaintiff was not entitled to any interest on the said amount. The document is signed by the parties in presence of two witnesses. It is also undisputeddd that nobody has raised any objection for such sale transaction. As found from the document, the defendant had agreed to purchase the said property for a consideration of Rs. 32,000/= and Rs. 16,000/= was kept by the plaintiff with the defendant by way of deposit. It is further found from the document that the plaintiff has to take steps for recovery of the said deposit. It is further found from the record that at the time of execution of the sale deed, all the required documents were furnished to the defendant as seen from the sale deed though it is not exhibited. I have perused the document of sale deed. The consideration was fixed at Rs. 32,000/= and the mode of payment was also highlighted. The last instalment of Rs. 16,000/= was paid by the defendant to the plaintiff in cash on the day when the document was executed and the plaintiff has also acknowledged having received such amount from the defendant. As per document Exh. 39 on the very day the plaintiff has kept Rs. 16,000/= with the defendant by way of deposit for 17 months. Accordingly, though the consideration of Rs. 13,000/= was fixed on the day when the transaction was executed, the plaintiff had received only Rs. 16,000/= from the defendant and the remaining Rs. 16,000/= remained with the defendant by way of deposit. As observed earlier, even at the time of executing the sale deed, all the required documents for sale of the property were furnished to the defendant and as found from the record for such sale transaction of the property the plaintiff had received only Rs. 16,000/= from the defendant and the same was also acknowledged by the plaintiff though the consideration of the sale of the property was fixed at Rs. 32,000/=, and reading the document Exh. 39 the remaining Rs. 16,000/= was kept by the plaintiff with the defendant by way of security deposit for 17 months. As found from the record, a legal notice was issued to the defendant on 5th July 1976 calling upon the defendant for payment of Rs. 16,000/=. The said legal notice is at Exh. 36 and the postal acknowledgment is at Exh. 37. In reply to the said notice the defendant had on 14th July 1976 denied the case of the plaintiff for such demand and as found from his reply full consideration of the property is paid to the plaintiff, and as found further from the said reply that the plaintiff has on 18th March 1976 executed a promissory note for Rs. 10,000/= and the defendant has to pay interest at the rate of 1%, and when he has demanded the said amount from

the plaintiff under the said reply by charging interest at Rs. 400/= calculated upto the period 17th July 1976 and on the said reply the plaintiff was called upon to make payment of the said amount within 8 days failing which the defendant will take legal remedy to recover the said amount as well as also claimed a sum of Rs. 51/= for cost of issuing the notice.

5. As found from the evidence, and it is the case of the plaintiff that inspite of legal notice issued in favour of the defendant, the defendant has not complied with by making payment of the sum of Rs. 16,051/- including the notice charges of Rs. 51.- with cost of the suit and also claimed interest on the said amount which was lying with the defendant as a reserved deposit and accordingly the plaintiff has filed the suit in the trial court on 1st May 1978. Along with the plaint the plaintiff has relied upon certain documents namely, the document of sale deed in respect of the property which was sold by the plaintiff in favour of the defendant dated 18th September 1972, the agreement of defendant dated 18th September 1972 signed by the plaintiff as well as teh defendant in presence of two witnesses. The defendant has filed written statement denying the claim of the plaintiff and even denying the fact of agreement executed by the defendant on 18th September 1972. The defendant has also in his written statement has denied that the no amount of Rs. 16,000/= was kept as a reserved deposit for 15 months and the said document even is not signed by the witnesses. In paragraph 5, it is the case of the defendant that a sum of Rs. 16,000/- was not made by way of deposit by the defendant and even the claim made by the plaintiff for notice charges of Rs. 51/- is also not proper. In paragraph 8, the defendant has raised a point regarding limitation by denying the case of the plaintiff that a sum of Rs. 16,000/- kept for 17 months was to be returned on 17th February 1974 as alleged by the plaintiff is not correct, and in paragraph 9, it is the case of the defendant that in respect of the property purchased by the defendant from the plaintiff the plaintiff was to provide the documents regarding clear title of the property wherein some of the documents were provided by the plaintiff and regarding some documents though demanded by the defendant from the plaintiff, the same were not furnished by the plaintiff. It is further the case of the defendant that the plaintiff has executed a promissory note by taking a sum of Rs. 10,000/- from the defendant for his business with interest at the rate of 1% as the plaintiff was in need of money and when the defendant has demanded the said money the plaintiff has filed the suit for payment of Rs.

16,000/-.

6. The ld. Judge while considering the issue regarding limitation has held that in view of Article 113 of the Limitation Act,the suit filed by the plaintiff is barred by limitation. The learned Judge has also discussed various judgements on the point of limitation in matters of Joseph Benzamine Ban Jover Vs. Official Assignee of Madras - AIR 1956 Madras 283; V.E.A Annamalai Chettiyar & Anr. Vs. S.V.V.S. Veerappa Chettiar and Others, reported in AIR 1956 S.C. Page 12; Harikumar Radhakrishnan Vs. Uderam, reported in AIR 1970 Bombay 202; and Memon Abdul Karim Haji Taiyab vs. Deputy Custodian General, reported in AIR 1964 S.C. 1256. The learned Judge has accordingly held that the amount of Rs. 16,000/- kept by the plaintiff with the defendant is an amount by way of security and not simplicitor deposit amount and the learned trial Judge has held that Article 113 of the Limitation Act will apply in view of the document Exh. 39 wherein the deposit was made by the plaintiff with the defendant for 17 months and the plaintiff was entitled to the said amount within 17 months and as the plaintiff has filed the suit on 1st May 1978 the learned trial Judge has held that the suit filed by the plaintiff is barred by limitation. In the decision in the case of Ram Janki Devi and another Vs. M/s. Juggilal Kamlapat, reported in AIR 1971 S.C. Page 2551, in paragraph 12, the Supreme Court has observed;

12. "The case of a deposit is something more than a mere loan of money. It will depend on the facts of each case whether the transaction is clothed with the character of a deposit of money. The surrounding circumstances, the relationship and character of the transaction and the manner in which parties treated the transaction will throw light on the true form of the transaction."

In Paragraph 16, it is further observed, which I reproduce hereunder;

16. The most important documentary evidence of the appellant namely, their book of account was not produced. These books of the appellant would have been shown how they treated the transaction, namely, whether it was a case of deposit or loan. The irreistible inference from the non-production of books of the appellant would arise that they would have supported the

> respondent's case and that is why they were not produced. The appellant's contention that the background of the transaction was mercantile loan, would be mere a conjecture than a conclusion to be arrived at. The financial transactions between the respondent and Lakshmi Ratan Cotton Mills were running accounts. It would be more consistent to hold that by allowing India Supplies a deposit of Rs. 4,00,000 India Supplies would be relieved of the situation of repaying the money immediately. It is precisely because of the then inability of India Supplies to repay Lakshmi Ratan Cotton Mills that the parties resorted to the mode of having the use of the money by way of deposit. The transaction was between the appellant, the respodnent and Lakshmi Ratan Cotton Mills. All figured in the transaction. A mere loan of Rupees 4,00,000 would not have sufficed the needs of the appellant who were then unable to pay the dues of Lakshmi Ratan Cotton Mills."

In light of the above decisions and as found from the evidence on record which I have already discussed earlier in respect of the sale of the property by the plaintiff to the defendant under document of sale deed dated 18th September 1972, the consideration for purchase of the property as agreed between the parties, the defendant had to pay Rs. 32,000/= and on the very day when the document Exh. 39 was executed between the parties, Rs. 16,000/was kept by the plaintiff with the defendant by way of deposit. It is, therefore, clear that though the according to purchase price of the property was arrived at Rs. 32,000/= the plaintiff has only Rs. 16,000/= and the remaining Rs. 16,000/= was kept by the plaintiff with the defendant by way of deposit and further nobody has objected for the sale transaction and further that the defendant has not entered in the witness box and considering the reply to the notice the defendant has called upon the plaintiff to pay a sum of Rs. 10,000/= plus interest quantified at Rs. 400/=, which according to him the said amount was taken by the plaintiff by way of loan as according to the defendant a promissory note was executed by the plaintiff. No document has come forward on the record nor the defendant has entered in the witness box which clearly shows that a legitimate claim of the plaintiff for recovery of Rs. 16,000/= was not made by the defendant to the plaintiff. It is not possible for me to accept the submission of Mr. Karia that as per document Exh. 39 the plaintiff was entitled for the said deposit within 17 months. He placed

reliance upon the decision in the matter of Kashinath Sankarappa Wani Vs. New Akot Cotton Ginning & Pressing Co.Ltd., - AIR 1958 S.C. 437. In Paragraph 6, the Court has observed, which I reproduce hereunder :

"(6) The only question which arises for our consideration in this appeal is whether the appellant's suit was barred by limitation. The appellant, in the first instance, relied upon the deposit receipt which was passed by the company in his favour on January 15, 1940. This receipt (Ex. P-1) evidenced a deposit of Rs. 79,519-12-9 for 12 months from August 1, 1939, to July 31, 1940, and the amount at the foot thereof became due and payable by the respondent to him on July 31, 1940. The appellant, however, sought to extend the commencement of the period of limitation to May 17, 1941 on the ground that the monies, the subject-matter of that deposit receipt, were payable to him on demand, that such demand was made by him on May 17, 1941, and that therefore, that was the date for the commencement of the period of limitation. No express agreement in this behalf could be proved by him nor could an agreement be implied from the course of dealings between him and the company for the period of 25 years during which the dealings continued between the parties. As a matter of fact, such an agreement, either express or implied, was negatived by the very terms of the deposit receipt which, apart from mentioning that the monies were received by the company as deposit for 12 months from August 1, 1939, to July 31, 11940, contained on the reverse a note that interest would cease on due date. This was sufficient to establish that the amount due at the foot of the deposit receipt became due and payable on the due date mentioned therein and that there was no question of the amount being payable at any time thereafter on demand being made in this behalf by the creditor. The course of dealings between the parties also negatived any such agreement because it appears from the record that such deposit receipts were passed by the company in his favour from time to time, each of such receipts being for a fixed period in the same terms as the deposit receipt in question and the receipts containing similar notes on the reverse that interest would cease on due date. Both the Courts below were therefore right in

coming to the conclusion that there was no agreement of the kind put forward by teh appellant that the monies due at the foot of the deposit receipt in question were re-payable on demand and that monies due at the foot thereof became due and payable by the company to him on 31st July 1940."

7. Mr. Karia has also placed reliance upon the decision of the Gujarat High Court in the matter of Harij Gram Panchayat V. Thakkar Lakhiram Ramji and others - AIR 1962 Gujarat 14. In Paragraph 5, the Court has observed which I reproduce as under :

"(5) Mr. S.N. Patel relied on Articles 60,62 and 97 of the Limitation Act. So far as Art. 60 is concerned it is obvious that that Article annot apply for it is only to suits for money deposited under an agreement that it shall be payable on demand that Article applies. The amount claimed in the suit cannot be said to have been deposited under an agreement that it shall be payable on demand. The amount was in fact deposited as security for due performance of the contract and kthat the amount became repayable to Thakkar Lakhiram Ramji. The amount was certainly not payable on demand. Article 60 must, therefore, be left out of consideration. Article 97 is equally inapplicable for by tis very language it applies only to suits for money paid upon an existing consideration which afterwards fails. There is no question in the present case of any failure of consideration. I need not, therefore, discuss any further the applicability of Article 97. The only other Article on which reliance was placed by Mr. S.N. Patel was Article 62 and in support of his contention that this Article applied, Mr. S.N. Patel invoked the aid of a decision of the Calcutta High Court reported in Johuri Mahton v. Thakoor Nath Lukee, ILR 5 Cal.830. Now Article 62 applies to suits for money payable by the defendant to the plaintiff's use. By reason of the use of this language which is borrowed from English cases, the Courts in some cases have been misled into thinking that the cause of action envisaged by Article 62 is that for money had and received as understood in England. But as observed by Chagla C.J., in Lingangouda Marigouda v. Lingangouda Fakirgouda, 54 Bom LR 829 : (AIR 1953 Bom 79) though the language used in this Article is the language

taken from English cases,

> "....there is one important fact that should be borne in mind that in England it was necessary for the Courts to find an implied contract in order that suits may be maintainable. A suit in personam would not lie unless there was an express or implied contract and therefore the Courts were at pains in many cases to infer or imply a contract so that the plaintiff should not fail by reason of a defect in procedure. Therefore, in the English books there are many cases where an implied contract has been arrived at in order to sustain the action. In India there never was any reason to stretch a point in favour of the plaintiff, in order to sustain his action. As Courts here were both Courts of law and equity, the question of formal procedure which was of such importance at one stage in England never troubled our Courts and our Judges, and therefore it is not always safe to follow English decisions in construing Article 62. If anything, in India Article 62 should be more strictly construed, because a liberal construction would result in more plaintiffs losing in a large number of cases on the ground of limitation, because if Art.62 is strictly construed, then the suit would fall under Article 120 which gives to the plaintiff a longer period of limitation."

I must bear these observations in mind while determining whether the present case is governed by Article 62. I must not import into the determination of the question the consideration whether the present suit would be a suit for money had and received under the common law in England but I must see whether on a strict construction of the language Art.62 applies to the present suit. It is no doubt true that the Calcutta High Court has held in Johuri Mahton's case, ILR 5 Cal 830 (supra) that Article 62 applies to a suit for recovery of an amount deposited as security for due performance of a contract but that decision proceeds on the assumption that such a suit is a suit for money had and received as understood in England and that Article 62 refers to all cases where a suit for money had and received would lie at common law in England. This assumption is unjustified and as Chagla, C.J., has pointed out, if Article 62 is construed in the manner in which the Calcutta High Court has done, a large number of cases would be liable to be dismissed on the ground of limitation. I cannot, therefore, follow the

decision of the Calcutta High Court referred to above. Turning to the language of Article 62, it is obvious that this Article can apply only where money has been received by the defendant for the plaintiff's use and the period of limitation in such a case is three years from the date when the money is received. Now can it be said in the present case that the amount of the deposit was received by the Harji Municipality for the use of Thakkar Lakhiram Ramji? The answer is obvious. The amount was received not for the use of Thakkar Lakhiram Ramji but as and by way of security for the due performance of the contract. At the date when the amount was received, it must be seen whether it was received for the use of Thakkar Lakhiram Ramji and judged by this test it is clear that it was not received for the use of Thakkar Lakhiram Ramji. This being the position, Art. 62 cannot possibly apply to the suit. Since there is no specific article which applies to the suit, the period of limitation for the suit must be governed by Article 120 which prescribes a period of six years from the date of accrual of the cause of action and in that view of the matter the suit cannot eb said to be barred by the law of limitation. The contention of Mr. S.N. Patel founded on the plea of limitation must therefore be rejected."

8. In light of the decisions cited before me which I have referred to earlier and in light of the evidence on the record, it is established that the property which was sold by the plaintiff to the defendant occupied by him as a tenant for consideration of Rs. 32,000/= and as found from the document of sale deed as well as the document Exh. 39, though the consideration was fixed at Rs. 32,000/=, the defendant had paid Rs. 16,000/= only to the plaintiff and remaining Rs. 16,000/= was kept by the plaintiff with the defendant by way of deposit. The document Exh. 39 is also on the stamp paper and signed by the parties in presence of witnesses. Accordingly on the day when the property was purchased no cash amount was received by the plaintiff as reflected in the sale document. Earlier the defendant has issued cheque in favour of the plaintiff on 3rd December 1971 for Rs. 8,000/-. The defendant has also paid cash of Rs. 1,000/- on 3rd December 1971. A cheque dated 1st January 1972 for Rs. 2,000/- was paid by the defendant to the plaintiff. Another cheque dated 18th September 1972 for sum of Rs. 3,350/- was issued by the defendant in favour of the plaintiff, Rs. 1,650/- an amount paid by the defendant by way of rent to the plaintiff calculating the amount for consideration of the sale transaction and cash amount of Rs. 16,000/- and the total comes to Rs. 32,000/-. As observed earlier, though it is mentioned in

the sale document that the plaintiff has received Rs. 16,000/- from the defendant, however, on the very day as per the agreement executed by the defendant the said sum of Rs. 16,000/- was retained by the defendant by way of reserved deposit for a period 17 months. The trial court also accepted by giving finding in favour of the plaintiff that the plaintiff has proved that he has kept Rs. 16,000/- as deposit at the time of sale of the suit property and further that even the plaintiff has proved that the defendant has agreed to repay Rs. 16,000/within 17 months as per the date of the agreement dated 18th September 1972. While deciding the issue of limitation the ld. trial Judge has held that the suit filed by the plaintiff is also beyond the period of limitation considering Article 113 of the Limitation Act. The respondent-defendant has not challenged the finding given by the trial court that the defendant has kept Rs. 16,000/- on the day when the document was executed and the defendant was also to pay Rs. 16,000/- without interest if no one objects about the sale transaction within 17 months. In view of the above background if the respondent-defendant has agreed to purchase the property for consideration of Rs. 32,000/it cannot be said that the property worth Rs. 32,000/- as agreed between the parties for which the plaintiff is only entitled to receive Rs. 16,000/-. The ld. trial Judge in my view was not right in focussing the case before him and the ld. trial Judge has committed an error in holding that the suit filed by the appellant-plaintiff is not within time while relying upon Art. 113 of the Limitation Act. The ld. Judge was to consider the fact that the agreement was executed by the defendant on the day when a sale deed was executed between the parties and defendant has agreed to purchase the property worth Rs. 32,000/and further that no one has objected or claimed the suit property though the plaintiff was to take steps from the defendant as highlighted in the document. The plaintiff when demanded the money within a period of 17 months and it is only on getting the notice dishonest stand was taken by the defendant by putting a case that the plaintiff has while executing promissory note on 18th March 1976 for a sum of Rs. 10,000/- has taken money from the defendant for his business purpose with interest at the rate of 1% and even in reply to the notice the defendant has called upon the plaintiff to pay a sum of Rs. 10,000/- with interest calculated at Rs. 400/- upto 17th July 1976. The defendant has not entered in the witness box. That clearly indicates the purpose for which the defendant has not even examined any witness or even he is examined before the Court. In short, when the defendant has purchased the property at the rate agreed

of Rs. 32,000/from the appellant-plaintiff and only Rs. 16,000/- was paid to the plaintiff the plaintiff was entitled to claim the amount of Rs. 16,000/- which was kept by the defendant as a reserved deposit.

9. In light of the evidence and the finding recorded by the learned trial Judge, this Court is of the view that the learned trial Judge was not right in holding that the suit filed by the plaintiff is barred by limitation and on examining the document Exh. 39 in light of the sale deed, Article 22 of the Limitation Act is attracted in the present case and accordingly the finding recorded by the learned trial Judge on the point of limitation deserves to be set aside. Accordingly, the appeal is allowed. The judgment and decree passed by the learned trial Judge dismissing the suit is set aside and the suit of the plaintiff is accordingly decreed. Considering the facts and circumstances, the appellant-plaintiff is entitled for a decree of Rs. 16,000/= with interest at the rate of 6% from the date, i.e., 8th September 1980, the date on which the present appeal is admitted till realisation with costs.

rmr. [D.K. Trivedi, J.]